of Donovan L.J. which stated that a person cannot give a valid notice to quit before legal relations exist between him and the recipient of the notice which otherwise permit such a notice. Mr. Chung, on behalf of the respondent, relied on the passage in the judgment of Ormerod L.J. which stated that he would find it difficult to hold that a notice to quit given before a tenancy had commenced was valid. Mr. Chao also referred us to the case of *Sidebotham* v. *Holland*[2] in which the Court of Appeal held that a notice to quit on the anniversary of the commencement of the term of the tenancy was a good notice. In that case, although it is settled law that a notice ought to expire on the last day of the current year of a tenancy from year to year, Lindley L.J. said:—

"But, although a half-year's notice to quit on the 18th would be correct, it does not follow that a notice to quit on the 19th, which is the anniversary of the day on which the tenancy commenced, is bad, and I am clearly of the opinion that it is not. I have looked at all the decisions which were referred to in the argument and at many more, and I can find none in which it has been held that a half-year's notice to quit on the anniversary of the day on which the tenancy commenced is bad. I should be very much surprised to find such a case. The validity of a notice to quit ought not to turn on the splitting of a straw. Moreover, if hypercriticisms are to be indulged in, a notice to quit at the first moment of the anniversary ought to be just as good as a notice to quit on the last moment of the day before. But such subtleties ought to be and are disregarded as out of place."

In the present case the tenant wanted and was given an assurance of a secured term of three years. The agreement in writing which he subsequently signed contained a clause that "notwithstanding anything herein contained either party may terminate the tenancy at any time by giving to the other party three (3) months' previous notice in writing". That clause governed the tenancy, new or existing, when the tenant exercised the "option for extension of 3 years". The notice to quit was given and served on January 31, 1972 in relation to the extended term to expire on April 30, 1972. It follows that in substance and in fact the tenant had been given the enjoyment of all his rights under the contract between the parties. Under these circumstances we do not share the doubt felt by Ormerod L.J. and do not find it difficult to hold that the notice to quit given on January 31, 1972 a few hours before the commencement of the extended term of the tenancy was a valid notice given in compliance with Clause 4(i) of the tenancy agreement. *Sorrell's* case is distinguishable in that the decision went against the landlord because it was to be implied from section 23(1) of the Agricultural Holdings Act, 1948 that a notice to quit for terminating a tenancy under that Act must be given in a year of the tenancy.

In any event, under the circumstances, the validity of the notice to quit ought not, in the words of Lindley L.J., to turn on the splitting of a straw and, even if there was a new tenancy, we hold that it was a valid notice.

For all these reasons, the appeal is allowed with costs here and in the court below.

Appeal allowed.

Solicitors: *Tan Kim Seng & Co.*

LEE KUAN YEW v. J.B. JEYARETNAM

[O.C.J. (Chua J.) January 9, 1979]
[Singapore — Suit No. 218 of 1977]

Libel and Slander — Defamation — Election speech — References to plaintiff and his family — Test whether words used are defamatory is objective not subjective — Effect words would have upon ordinary hearer — Defence of qualified privilege — Fair comment — Damages — Aggravated damages — Defamation Act (Cap. 32), ss. 9 14.

Torts — Defamation — Election speech — References to plaintiff and his family.

In this case the plaintiff, the Prime Minister of Singapore, brought an action for defamation against the defendant, the Secretary-General of the Workers' Party, arising out of a speech made by the defendant during the course of the general election in December 1976. It was alleged by the plaintiff that the words used by the defendant in their natural and ordinary meaning meant and were understood to mean that the plaintiff had procured preferential treatment for his brother and/or wife to his own and/or their personal financial advantage, had thereby abused and would continue to abuse the office of Prime Minister of Singapore, is wanting in honesty and integrity and is unfit to hold the said office. In his defence the defendant denied that the said words bore or were understood to bear any of the meanings alleged or any meaning defamatory of the plaintiff. The defendant also relied on the defences of qualified privilege and fair comment.

Held: (1) the test to be applied in construing the words used is objective not subjective. The test is the effect which the words would have upon the ordinary hearer. There could be no doubt that the words used in this case bore the meaning that the plaintiff had procured the favours to Lee & Lee and to his family;

(2) the plaintiff had proved that the words complained of were published of him by the defendant and that the words were defamatory of him;

(3) the fact that it was election time gave no privilege to the defendant. He was entitled to defend himself against an attack but he could not proceed to make a counter-charge which was not part of his refutation of the attack made on him. In this case the defence of qualified privilege failed;

(4) the defence of fair comment also failed as the words used were not comments; even if they were comments they were not fair comments; and it was clear that in speaking and publishing the words the defendant was actuated by express malice;

(5) there were factors which made this a serious case and in all circumstances the sum of $130,000 damages would be a fair compensation for the very serious slander.

Cases referred to:-

(1) *Capital and Counties Bank* v. *Henty* (1882) 7 H.L. 741.
(2) *E. Hulton & Co.* v. *Jones* [1910] A.C. 20.
(3) *Lewis* v. *Daily Telegraph Ltd.* [1964] A.C. 234.
(4) *Jones* v. *Skelton* [1963] 3 All E.R. 952.
(5) *Grubb v. Bristol United Press Ltd.* [1963] 1 Q.B. 309.
(6) *Plummer* v. *Charman* [1962] 1 W.L.R. 1469.
(7) *Turner* v. *M.G.M. Pictures Ltd.* [1950] 1 All E.R. 449.
(8) *R.* v. *Flowers* (1880) 44 J.P. 377.
(9) *Horrocks* v. *Lowe* [1975] A.C. 135.
(10) *McCarey* v. *Associated Newspapers Ltd.* [1964] 3 All E.R. 947, 960.
(11) *Cassel & Co. Ltd.* v. *Broome* [1972] A.C. 1027.
(12) *Bernstein* v. *The Observer, The Times*, May 5, 1976.

CIVIL SUIT.

Robert Alexander Q.C. (*J. Grimberg* with him) for the plaintiff.

John Mortimer Q.C. (*K.E. Hilborne* with him) for the defendant.

Cur. Adv. Vult.

Chua J.: This is a defamation action brought by Mr. Lee Kuan Yew, the Prime Minister of Singapore, against Mr. Joshua Benjamin Jeyaretnam, the Secretary-General of the Workers' Party, arising out of a speech made by Mr. Jeyaretnam at a rally held in Fullerton Square during the course of the last General Election in December 1976.

The plaintiff, Mr. Lee Kuan Yew, qualified as an Advocate and Solicitor and was admitted to practise in August 1951. Besides practising law, he was active in politics and was appointed Secretary-General of the People's Action Party (PAP) when it was founded in November 1954. In March 1955, the plaintiff was returned as a member of the Legislative Assembly. In September 1955, he established the firm of Lee & Lee in partnership with his wife and his brother, Mr. Lee Kim Yew. He continued both to practise law and engage in politics though he increasingly devoted more time to politics. This went on till the General Election of 1959.

In May 1959, the PAP won the majority of seats in Parliament and the plaintiff formed a government. Since then the PAP has been successfully re-elected to power at general elections and remains the party of Government to this day.

Upon assuming office for the first time as Prime Minister in June 1959, the plaintiff ceased to be a partner in the firm of Lee & Lee and his name was scratched off the firm's letterhead and since then he has no association with the professional activities of that firm. His wife and brother continued and still continue to practise law under the style of Lee & Lee.

The defendant, Mr. J.B. Jeyaretnam, is also an Advocate and Solicitor and was in the Singapore Legal Service and had held various posts including those of Registrar of the Supreme Court and District Judge & First Magistrate, before deciding in 1965 to engage in private practice. He joined Mr. David Marshall as a partner and after a year he joined the firm of Donaldson & Burkinshaw and in March 1968, he set up his own law practice with his wife, who is a solicitor, as a partner under the style of J.B. Jeyaretnam & Co. and they still carry on that practice.

After the failure of certain constitutional talks in London in 1956, Mr. David Marshall, the Chief Minister of Singapore, resigned from the Labour Front and later founded the Workers' Party. Mr. Marshall resigned from the party in 1962 following the arrest of certain party members. In 1971 the defendant became the Secretary-General of the Workers' Party. He has also been active in politics and has stood for Parliament on three occasions, in 1972, 1976 and a by-election in 1977.

In December 1976, the Government called a General Election. Polling day was to be on December 23. Both Government and opposition parties opened their campaigns with speeches which were critical of each other.

On December 13 the plaintiff held a press conference and it was reported in the *Straits Times* of December 14 (AB7). The following passages appear in the report:

"The People's Action Party would welcome an opposition in Parliament, but, unfortunately, the leaders of the present opposition parties are inconsequential men with a common denominator — they liked to be elected into office but they did not know what they wanted to get into Parliament for....

The Prime Minister said most of them wanted to give everything away — lower taxes, lower rents and lower public utilities rates....

He did not believe that the public would go in for the give-aways proposed by the opposition. As an example he said that none of those who proposed to give things away, either by their management of their own parties or even of their own personal fortunes, had shown they could accumulate anything.

In contrast he referred to what the PAP had built up in the Government — over $8,000 million....

In reply to another question on an opposition to PAP, Mr. Lee said that the pity of it was that nobody in the present opposition had it in him to oppose.

'They want to do what they think are popular things, or what the followers of the Malayan Communist Party believe are popular things'."

In his speech at a Workers' Party rally at Fullerton Square on December 14, the defendant accused the Government of blatant dishonesty on two matters, namely the re-settlement of farmers in Jalan Kayu and the sterilisation of mothers with more than two children. He also accused the Prime Minister of being dishonest in not giving a truthful answer in Australia when interviewed over TV when the Prime Minister said he had never appointed any judges to the High Court since he came into power when in fact two judges were appointed by him for a two-year term.

On Saturday, December 18, five days before polling day the Workers' Party held a lunch time rally at Fullerton Square. It was an important meeting attended by 1,500 people who appeared to be mostly office workers, executives and managers from banks and other businesses in the area. The defendant was the main speaker and he spoke in English. In the course of his speech, the defendant made references to the Prime Minister and his family and the plaintiff says that the speech is defamatory. The words the defendant used are these and the words complained of by the plaintiff are underlined:

"Now I want, this afternoon to spend some time my dear friends in reply to some of the statements that have been made by the PAP leaders and the leaders of government against the oppositions and in particular the Workers' Party. I will begin with the Secretary General of the People's Action Party, oh sorry Pay and Pay Party and the Prime Minister now of Singapore, that practise the government and holding the reign of power. I don't know whether the Secretary-General, Prime Minister of Singapore realised what he was saying. Very unfortunate. I'll tell you what he said. On nomination day when he was filing his papers, he says, 'What can you expect from the opposition leaders. They haven't shown in the management of their own personal fortune that they could accumulate anything.' This is, I've taken this from the *Straits Times* that the opposition leaders have not shown in the management of their own personal fortune that they could accumulate anything. Well, my dear friends, I feel guilty for that. I'm not very good in the management of my own personal fortunes but Mr. Lee Kuan Yew has managed his personal fortunes very well. He is the Prime Minister of Singapore. His wife is the senior partner of Lee & Lee and his brother is the Director of several companies, including

Tat Lee Bank in Market Street; the bank which was given a permit with alacrity, banking permit licence when other banks were having difficulty getting their licence. So Mr. Lee Kuan Yew is very adept in managing his own personal fortunes but I am not. I am a fool for your sake. And I tell you this, my dear friends, that if I should become Prime Minister of Singapore, I'm not saying I will, Mr. Lee Kuan Yew keeps talking as though he is going to remain for the next 20 years. I know it's left to the people; the people decide who will form the government and then the people in Parliament will decide who will be the Prime Minister. All I'm saying is, if I become Prime Minister there will be no firm of J.B. Jeyaretnam & Company in Singapore because I wouldn't know how to manage my own personal fortunes."

The result of the General Election was that the PAP won all the seats and the number of people who voted for the PAP was higher in 1976 than in 1972.

Soon after the elections were over the plaintiff sought a public apology from the defendant. The plaintiff's solicitors wrote on January 8, 1977, requesting such apology (AB9). Correspondence passed between plaintiff's solicitors and defendant's solicitors. The plaintiff then issued the writ on January 22, 1977.

Following the institution of these proceedings statements were issued and published in the *Straits Times* of March 6, 1977, that the Workers' Party had set up a "Save Democracy Trust Fund", to which only Singapore citizens were invited to contribute, for the purpose initially of helping its Secretary-General Mr. J.B. Jeyaretnam to pay for legal aid in a suit in which he was being sued by Mr. Lee Kuan Yew for defamation.

On April 7, 1977, the plaintiff's solicitors wrote to the defendant's solicitors about the "Save Democracy Trust Fund" and said that the title of the fund aggravated the injury and the damage to the plaintiff and asked the defendant to make a full retraction and apology in open court in terms to be approved by the plaintiff's solicitors on behalf of the plaintiff and to take steps to dismantle the fund and to return to the contributors the monies that had been collected (AB35).

The defendant's solicitors replied on April 12, 1977, (AB37) pointing out that the "Save Democracy Trust Fund" had not been set up by the Workers' Party; that it had been set up by individuals who were admittedly members of the Party but the setting up of the fund and the control of it was completely outside the Workers' Party; that they were at a loss to understand how actions of third persons could aggravate any damage that the defendant's address might have caused to the plaintiff.

There appeared an article in the *Financial Times* of November 1, 1977, purported to base itself on an interview with the defendant and in it the defendant was reported as having said that the Workers' Party candidates who made personal criticisms of the PAP ministers were inclined to find themselves faced with libel charges.

On November 24, 1977, the plaintiff's solicitors wrote to the defendant's solicitors about this article and complained that they were slanderous remarks concerning the plaintiff and asking if the defendant was prepared to admit the statements attributed to him in the article.

On December 7, 1977, the defendant's solicitors replied that the defendant categorically denied that he informed the *Financial Times* correspondent that the plaintiff had brought an action against him solely for the purpose of silencing personal criticism of the plaintiff or that the plaintiff had brought similar actions against Workers' Party candidates with the object of cowing them.

There is no dispute that the defendant spoke to third persons the words that are complained of and that they referred to the plaintiff. The question is do they bear a defamatory meaning.

In his statement of claim the plaintiff alleged in para. 4:

"The said words in their natural and ordinary meaning meant and were understood to mean that the plaintiff had procured preferential treatment for his brother and/or wife to his own and/or their personal financial advantage, had thereby abused and would continue to abuse the office of Prime Minister of Singapore, is wanting in honesty and integrity and is unfit to hold the said office."

By his defence the defendant pleaded in answer to para. 4 of the statement of claim:

"It is denied that the said words bore or were understood to bear any of the meanings in para. 4 of the Statement of Claim alleged or any meaning defamatory of the plaintiff."

The plaintiff's arguments are that the natural and ordinary meaning of the words complained of are and can only be an allegation of dishonesty against the plaintiff.

The submission of the defendant is this. He says that the words complained of are quite clearly an answer to the attack made by the plaintiff on the defendant at the press conference on December 13, 1976, where the plaintiff included the defendant in the description of "inconsequential men with a common denominator — they liked to be elected into office but they did not know what they wanted to get into Parliament for" and suggested that the defendant's politics were influenced by what the followers of the Malayan Communist Party believed to be popular and further alleged that the defendant was an incompetent politician and unfit for office "because even by the management of his own personal fortune he had not shown he could accumulate anything." It is submitted that the inference to be drawn from these remarks was that the plaintiff was a better politician because he was able to manage his own personal fortunes better than the defendant and had accumulated more wealth.

In answering this attack the defendant says that in his speech on December 18, he admits that he is not a rich man; he concedes that the Prime Minister has managed his personal fortunes well. He says that the plaintiff's wife runs a successful law firm which attracts a good deal of business perhaps because she is the Prime Minister's wife, and the firm attracts clients as it is perfectly normal, natural and legal that it should. He goes on to say that the plaintiff's brother is successful in business. Doors open to him,

no doubt again because he bears the Prime Minister's name. So it might be that members of distinguished families in all countries find doors open to them and their path smoothed, quite without illegality or dishonesty by anyone. Furthermore, the defendant is saying that if he attains office as Prime Minister he would not allow his family firm to continue and perhaps gain unfair advantage from the lustre of the Prime Ministerial name.

Counsel for the defendant submits that looked at in this sense the words clearly do not have the defamatory meaning attached to them by the plaintiff. They carry no imputation of illegality, abuse or dishonesty. They make the comment that the Prime Minister's close family ought not to have continued to practise under the name of Lee & Lee. This is an opinion which others may not agree but which was quite honestly held. It is submitted that if the words can have this meaning, the plaintiff must not choose another meaning simply because it suits his case. (*Capital & Counties Bank* v. *Henty*[1]). Furthermore in letters written on January 10, 1977, (AB14) and March 28, (AB32) the defendant promptly made it clear that he did not intend the words to contain any allegation of illegality or lack of honesty.

To put it shortly the defendant submits that the words complained of bear the meaning which can be thus summarised: "It is unnecessary to be wealthy to be a successful politician. Mr. Lee Kuan Yew may be wealthy but, in my view, behaved wrongly in allowing his wife and brother to practise under the style of Lee & Lee since, although that is in no way improper or corrupt or illegal, it has led to them deriving an undue advantage."

There is only one issue on liability: Do the words bear the meaning that the plaintiff used his position improperly to procure favours for himself and his family?

The essential facts are in no way in dispute. It is common ground that one of the consistent and well-known policies of the Government has been its stance that there shall be no corruption in public life. The plaintiff expressed the view in evidence that such corruption would eat at the fabric of society; it would erode the efficiency of Government; it would filter down to all levels and affect the basis on which decisions were taken. This policy is well-known throughout Singapore and would be known both to Singaporeans and any foreigners who had made any elementary enquiries about Singapore. Thus these people, both local and foreigners, would know that there is nothing to be gained from going to Lee & Lee or from having Mr. Lee Kim Yew on the Board of Directors because the Government believed in total honesty and impartiality as the basis upon which decisions are to be taken.

On December 13, 1976, the plaintiff held a press conference at which he engaged in general criticism of opposition leaders without singling out any specific individuals. He pointed out that the opposition were planning large-scale reductions in taxes and rents and expressed the view that those who were offering to take over the country's finances had not shown that they were capable of saving.

The defendant in evidence said that the report of this press conference was not drawn to his attention until after the speech he made on December 14. In that speech, however, he accused the Government of blatant dishonesty on two matters and over one matter he specifically accused the plaintiff of dishonesty.

The defendant said in evidence that when he read the plaintiff's press conference he was incensed. The defendant was indulging in this type of campaign himself and it is difficult to see how he could feel too incensed when the plaintiff criticised simply his competence. Even before he read the plaintiff's press conference he had decided to make the honesty of Government one of his election themes.

The rally in Fullerton Square on December 18 was an important lunch time rally with about 1,500 people present. The defendant was the principal speaker. He was the leading opposition figure; he was head of the opposition party which had obtained most votes in the 1972 elections and he was known to be an experienced Advocate and Solicitor. His audience would respect his words and be inclined to believe them. It is also clear that the gist of any important message would not be confined to his hearers. They would tend to tell their families, friends and neighbours.

There are a large number of background facts which are now wholly accepted by the defendant. When the plaintiff assumed office he was determined that no one should have ground for criticising the integrity of his government. He gave instructions that work was not to be given to Lee & Lee; he went out of his way to ensure that Lee & Lee was not given preferential treatment. By 1970 he felt able to relax the position somewhat because the reputation of the Government for integrity was well-established. From then onwards Lee & Lee have been eligible for government work but upon the strict basis that they must compete on equal terms with Singaporeans. Similarly the plaintiff has never used his influence in any way to further his brother's career. The defendant, after evidence has been adduced by the plaintiff, acknowledges that the grant of the licence to Tat Lee Bank was made in the normal course of business.

The defendant claimed in his speech that the Tat Lee Bank, of which Mr. Lee Kim Yew is a director, was given a banking licence with alacrity when other banks were having difficulties. The evidence of Mr. Michael Wong Pakshong, the Managing Director of the Monetary Authority of Singapore, established conclusively that this was not the case. Mr. Michael Wong Pakshong was unshaken in cross-examination and the defendant in the witness box accepted his evidence. It is clear from the evidence of Mr. Michael Wong Pakshong that the Tat Lee licence was neither considered nor expedited by reason of the involvement of Lee & Lee or Mr. Lee Kim Yew. The licence was granted strictly upon the merits of the application. Far from having been granted with alacrity, the licence had been issued after careful consideration over a substantial period of time.

The meaning of the words is a question entirely for the court. The meaning intended by the publisher is irrelevant for the purpose of construing the words. This important principle in the law of defamation in England was finally settled by the decision of the House of Lords in *E. Hulton & Co.* v. *Jones*[2] where Lord Loreburn L.C. said (at 23): —

"A person charged with libel cannot defend himself by showing that he intended in his own breast not to defame or that he intended not to defame the plaintiff, if in fact he did both."

The test is objective and not subjective.

It is clear from the authorities that the test to be applied is the effect which the words would have upon the ordinary hearer. In *Capital & Counties Bank* v. *Henty*[1] Lord Selbourne L.C. stated (at 745): —

"The test, according to the authorities, is, whether under the circumstances in which the writing was published, reasonable men, to whom the publication was made, would be likely to understand it in a libellous sense."

To the same effect were the words of Lord Blackburn who stated (at 772): —

"In construing the words to see whether they are a libel, the court is, where nothing is alleged to give them an extended sense, to put that meaning on them which the words would be understood by ordinary persons to bear, and say whether the words so understood are calculated to convey an injurious imputation. The question is not whether the defendant intended to convey that imputation; for if he, without excuse or justification, did what he knew or ought to have known was calculated to injure the plaintiff, he must (at least civilly) be responsible for the consequences, . . ."

Further in his speech Lord Blackburn said (at 786):

". . . it is unreasonable that when there are a number of good interpretations, the only bad one should be seized upon to give a defamatory sense to the document."

The correct method of approach to the question of construction was considered at length in the House of Lords in *Lewis* v. *Daily Telegraph Ltd.*[3] Lord Reid put the matter as follows (at 258): —

"There is no doubt that in actions for libel the question is what the words would convey to the ordinary man: it is not one of construction in the legal sense. The ordinary man does not live in an ivory tower and he is not inhibited by a knowledge of the rules of construction. So he can and does read between the lines in the light of his general knowledge and experience of worldly affairs. . . .

What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of the words. But that expression is rather misleading in that it conceals the fact that there are two elements in it. Sometimes it is not necessary to go beyond the words themselves, as where the plaintiff has been called a thief or a murderer. But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them, and that is also regarded as part of their natural and ordinary meaning."

And in the same case Lord Devlin said (at 277): —

"My Lords, the natural and ordinary meaning of words ought in theory to be the same for the lawyer as for the layman, because the lawyer's first rule of construction is that words are to be given their natural and ordinary meaning as popularly understood. The proposition that ordinary words are the same for the lawyer as for the layman is as a matter of pure construction undoubtedly true. But it is very difficult to draw the line between pure construction and implication, and the layman's capacity for implication is much greater than the lawyer's. The lawyer's rule is that the implication must be necessary as well as reasonable. The layman reads in an implication much more freely; and unfortunately, as the law of defamation has to take into account, is especially prone to do so when it is derogatory."

Lord Morris of Borth-y-Gest in the Privy Council in *Jones* v. *Skelton*[4] said (at 958): —

"The ordinary and natural meaning of words may be either the literal meaning or it may be implied or inferred or an indirect meaning; any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words (see *Lewis* v. *Daily Telegraph, Ltd.*[3]). The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader, guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction, would draw from the words."

And in *Grubb* v. *Bristol United Press Ltd.*[5] Holroyd Pearce L.J. said (at 327): —

"But in deciding the ordinary and natural meaning of the words the jury must take into account the ordinary reasonable implications of the words. As Cotton L.J. said in *Henty's* case in the Court of Appeal: 'One must consider, not what the words are, but what conclusion could reasonably be drawn from it, as a man who issues such a document is answerable not only for the terms of it but also for the conclusion and meaning which persons will reasonably draw from and put upon the document.' If the defendant published of John Smith: "His name is certainly not George Washington' then, however much the defendant may argue that the words were a harmless truism concerned merely with nomenclature, the natural and ordinary implication of the words is that John Smith is untruthful; and presumably the jury would find that to be the ordinary meaning of the words."

Now, what is the meaning of the words complained of? They must, in my view, be considered in the context that it was not the intention of the defendant to praise the plaintiff. Nor was it his intention to point out that the plaintiff and members of his family had all been highly successful because of their own skills. It was his intention to be derogatory of the plaintiff. The attack is clearly aimed primarily at the plaintiff. On two occasions the defendant refers to the fact that the plaintiff has managed his personal fortune very well and the defendant is saying that the plaintiff's wife and brother are the means by which the plaintiff has managed his personal fortune. The suggestion that the Tat Lee Bank was given a banking licence with alacrity when other banks were having difficulties getting their licence is a very clear suggestion that the plaintiff's brother's bank was shown favour. The defendant was therefore suggesting that one of the ways in which the plaintiff managed his personal fortune well was by dispensing deliberate favours to his brother. This meaning is reinforced by the use at the beginning of the next sentence by the word "So". This relates the general comment that "Mr. Lee Kuan Yew is very adept at managing his own personal fortune" to the previous statements in which the defendant had made it plain that the plaintiff had shown favour to his family. The defendant is clearly saying that the plaintiff is adept in managing his own fortune because he used corrupt methods. This is further reinforced by the later words of the defendant where he said "if I become Prime Minister, there will be no firm of J.B. Jeyaretnam & Co. in Singapore because I wouldn't know how to manage my own personal fortunes". There can be nothing wrong in principle with a Prime Minister's wife continuing to practise law. In suggesting that his firm would be wound up, the defendant is really saying nothing more than that he is not going to show favour to his family in the way in which, so he alleges, the plaintiff shows favour. These words do not mean that the plaintiff ought to have insisted that the name of the firm in which his wife and brother are carrying

on practice be changed, but they are a direct attack upon the way the plaintiff has managed his personal fortunes. The references to Lee & Lee, Mr. Lee Kim Yew's directorship and the circumstances in which the Tat Lee Bank was granted a licence are all suggestions being part and parcel of the way the plaintiff has managed his fortunes. The clear suggestion is made that the plaintiff influenced the grant of the licence to the Tat Lee Bank and secured the grant of preference to that bank. There can be no doubt that the words bear the meaning that the plaintiff had procured the grant of favours to Lee & Lee and to his family. To put it in blunt terms the words mean that the plaintiff has been guilty of nepotism and corruption, and this would mean that the plaintiff is unfit to be Prime Minister.

The plaintiff has proved that the words complained of were published of him by the defendant and that the words were defamatory of him. It is now necessary to consider the defences set up by the defendant.

The defendant pleaded that the words were published on an occasion of qualified privilege to electors who had an interest to receive the information.

It is submitted that the defendant said what he said in answer to an attack upon his financial capacity, character and reputation which had been made by the plaintiff at the press conference when the plaintiff opened his election campaign on December 13, 1976. Counsel for the defendant says that the whole attitude of the plaintiff to the defendant was to belittle him, to cover him with ridicule and contempt and to humiliate him in the eyes of the electors. And to say of the leader of the Workers' Party, which is a moderate socialist democratic party, that he wishes to introduce policies which the Malayan Communist Party would find popular is highly defamatory. The defendant was incensed and having regard to the words of the plaintiff which sparked off this controversy how can it be said that the speech of the defendant on December 18 is not a proper, perfectly fair and unmalicious reply?

It is clear that the fact that it was election time gives no privilege (see Defamation Act (Cap. 32) section 14). In *Plummer* v. *Charman*[6] Diplock L.J. said (at 1474):—

"I need hardly say that there is no privilege known to the law which entitles persons engaged in politics to misstate a fact about their opponents provided they say it honestly even though untruthfully. They can comment upon the conduct of persons in public life, provided they do so honestly and without malice."

A person whose character or conduct has been attacked is entitled to answer such attack and any defamatory statements he may make about the person who attacked him will be privileged, provided they are published *bona fide* and are fairly relevant to the accusations made.

In *Turner* v. *M.G.M. Pictures Ltd.*[7] Lord Oaksey said (at 470):

"There is, it seems to me, an analogy between the criminal law of self defence and a man's right to defend himself against written or verbal attacks. In both cases he is entitled, if he can, to defend himself effectively, and he only loses the protection of the law if he goes beyond defence and proceeds to offence. That is to say, the circumstances in which he defends himself, either by acts or by words, negative the malice which the law draws from violent acts or defamatory words. If you are attacked with a deadly weapon you can defend yourself with a deadly weapon or with any other weapon which may protect your life. The law does not concern itself with niceties in such matters. If you are attacked by a prize fighter you are not bound to adhere to the Queensberry rules in yours defence. The 'Lion's Roar' was probably not as far-reaching as the appellant's voice of the B.B.C. wireless, nor could the respondents, so far as the evidence shows, command so pointed a pen as that of the appellant. They had, therefore, to adopt other means of defence, but provided that they were means of defence and not of offence or attack, they are not evidence of malice, but merely the adoption of the most effective method of defence available."

The authorities are clear. A man may defend himself against an attack but he may not proceed to make a counter-charge which is not part of his refutation of the attack made on him.

What is the position in the present case? Here the defamatory statement made by the defendant is quite unconnected with and irrelevant to the accusations made against him by the plaintiff and they are not published *bona fide*. The charge of nepotism and corruption against the plaintiff was in no sense a defence by the defendant against a charge of incompetence. The defendant made an unwarranted and unjustifiable attack on the plaintiff's honesty and integrity. The words were published by the defendant recklessly without an honest belief in their truth with the intention of denigrating and insulting the plaintiff and in speaking and publishing those words the defendant was actuated by malice.

The defendant says that the plaintiff was attacking his incapacity and suggesting that he was influenced by communist policies and that he was incensed. If that was the real position one would have expected him to reply to those points in his speech on December 18 or recorded the fact that he was incensed about these inaccuracies in his letter of January 10, 1977, (AB14), but he did not do so on either occasion. I have come to the conclusion that the defendant was upset not by the plaintiff's suggestion that he was influenced by communist policies but by the suggestion that the opposition leaders had not shown themselves able to accumulate anything, and he was out to make an attack upon the plaintiff on December 18.

I hold that the plea of qualified privilege fails.

The defendant pleads that the words complained of were published by him as fair comment on a matter of public interest. He has given particulars of the facts on which he alleges the comment to be based.

To succeed in a defence of fair comment, the words complained of must be shown to be:

(1) Comment.

(2) Fair comment.

(3) Fair comment on some matter of public interest.

A comment is a statement of opinion on facts. The defence of fair comment arises if the words convey imputation of fact. The imputations in the present case are undoubtedly imputations of fact. A libellous statement of fact is not a comment or criticism on anything (see *R.* v. *Flowers*[8]). I am of the view

that the plea of fair comment is not available to the defendant.

Even if the words were comments, for the plea to succeed it must be fair comment. There is no specific definition of fair comment, but from the authorities it is clear that, in order that a comment may be fair, the following conditions must be satisfied:

(a) Subject to the provisions of section 9 of the Defamation Act (Cap. 32) it must be based on facts truly stated.

(b) It must not contain imputations of corrupt or dishonourable motives on the person whose conduct or work is criticised, save in so far as such imputations are warranted by the facts.

(c) It must be the honest expression of the writer's legal opinion.

(See para. 716 of *Gatley* on Libel & Slander 7th Ed.).

In the present case the comment (if it is a comment) does not satisfy any of the conditions that I have set out.

Even though the comment satisfies the objective test of fair comment, the defence of fair comment will nevertheless fail if it is found that in making the comment the defendant was actuated by express malice. The test of malice has now been summarised by the House of Lords in *Horrocks* v. *Lowe*.[9]

In the present case the defendant made the publication recklessly, being indifferent to the truth of what he published and neither considering nor caring whether it was true or not and he should be treated as if he knew it to be false. In speaking and publishing those words the defendant was actuated by express malice.

I now come to deal with the plaintiff's claim for damages.

In an action for defamation the only relief which the plaintiff can obtain from a court, apart from an injunction in appropriate circumstances to prevent repetition of the libel or slander, is an award of damages. The general rule is that the damages are to be assessed on a compensatory basis. The principles governing such awards are summarised in para. 1358 of *Gatley* on Libel & Slander, 7th Ed., thus:

"In an action of libel 'the assessment of damages does not depend on any legal rule.' The amount of damages is 'peculiarly the province of the jury', who in assessing them will naturally be governed by all the circumstances of the particular case. They are entitled to take into their consideration the conduct of the plaintiff, his position and standing, the nature of the libel, the mode and extent of publication, the absence or refusal of any retraction or apology, and 'the whole conduct of the defendant from the time when the libel was published down to the very moment of their verdict. They may take into consideration the conduct of the defendant before action, after action, and in court at the trial of the action,' and also, it is submitted, the conduct of his counsel, who cannot shelter his client by taking responsibility for the conduct of the case. They should allow 'for the sad truth that no apology, retraction or withdrawal can ever be guaranteed completely to undo the harm it has done or the hurt it has caused.' They should also take into account the evidence led in aggravation or mitigation of the damages. They should not take into account in assessing damages any part of the words complained of in respect of which the defendant has made out a defence, or any damage done to the plaintiff's reputation or feelings by any defamatory matter for which the plaintiff is not responsible. They should not speculate on whether the defendant will be indemnified."

Counsel for the plaintiff says that the plaintiff seeks only in this action such damages as are fair to compensate him for the injury which the defendant has done to his reputation; he in no way seeks excessive or vindictive damages, but it is submitted that in the circumstances of this case the award should include an element of "aggravated damages".

On the other hand counsel for the defendant submits that the amount of damages must be judged solely on the damage personally suffered by the plaintiff and not because he feels that some high or exorbitant figure would impress the electors in some future political contest. Counsel says if the plaintiff had accepted the defendant's apology instead of insisting on heavy damages the plaintiff's damages would have been mitigated and the "black cloud" the plaintiff referred to would long ago have been lifted from his head. Counsel submits that damages in this case should be modest for the following "cogent and powerful reasons": —

(a) The words were spoken in the heat of an election campaign. Moreover, by his words on December 13 the plaintiff provoked the defendant's attack.

(b) By his letter from January 10, 1977, onwards the defendant withdrew all suggested allegations of nepotism or corruption. This was done in prompt reply to the plaintiff's complaint and shortly after the speech.

(c) The defendant's conduct of his case has in no way inflamed the damages. He has conducted it without making any allegations of nepotism or corruption, he made it quite clear in his evidence he made no such allegations. Moreover he made no attack on the plaintiff in the witness box, although the plaintiff made strong attacks upon the defendant.

(d) The defence of the action was made necessary by the plaintiff's insistence on "heavy damages" and the defendant must not be penalised for exercising his legal right to defend or to save costs by administering interrogatories to establish agreed facts.

(e) The speech was not reported in the press and the plaintiff has suffered minimal damage — see his election results and those of his Party.

It is further submitted by counsel for the defendant that damages for defamation should not be more than damage for physical injury (*per* Diplock L.J. in *McCarey* v. *Associated Newspapers Ltd.*[10]).

The learned authors of *Gatley* on Libel & Slander, 7th Ed. have this to say as regards aggravated damages:

"1359. Aggravated damages. The conduct of defendant, his conduct of the case, and his state of mind are thus all matters which the plaintiff may rely on as aggravating the damages. 'Moreover, it is very well established that in cases where the damages are at large the jury (or the judge if the award is left to him) can take into account the motives and conduct of the defendant where they aggravate the injury done to the plaintiff. There may be malevolence or spite or the manner of committing the wrong may be such as to injure the plaintiff's proper feelings of dignity and pride. These are matters which the jury can take into account in assessing the appropriate compensation.' 'In awarding 'aggravated damages' the natural indignation of the court at the injury inflicted on the

plaintiff is a perfectly legitimate motive in making a generous, rather than a more moderate award to provide an adequate solatium... that is because the injury to the plaintiff is actually greater, and, as the result of the conduct exciting the indignation, demands a more generous solatium'."

There does not seem to be any general trend in England to relate damages in actions for defamation to awards made in cases involving personal injuries. The case cited by counsel for the defendant is almost fifteen years old. The large subjective element in an award for damages in an action for defamation makes it difficult to draw a fair comparison with awards in other types of action. This difficulty was discussed by Lord Hailsham of St. Marylebone L.C. in *Cassel & Co. Ltd.* v. *Broome*[11] where he said (at 1071): —

"This is why it is not necessarily fair to compare awards of damages in this field (in defamation) with damages for personal injuries. Quite obviously, the award must include factors for injury to the feelings, the anxiety and uncertainty undergone in the litigation, the absence of apology, or the reaffirmation of the truth of the matters complained of, or malice of the defendant. The bad conduct of the plaintiff himself may also enter into the matter, where he has provoked the libel, or where perhaps he has libelled the defendant in reply. What is awarded is thus a figure which cannot be arrived at by any purely objective computation. This is what is meant when the damages in defamation are described as being 'at large'."

In *Bernstein* v. *The Observer Ltd. and Others*[12] the jury awarded the plaintiff £35,000 damages in a libel action. The defendants appealed. Lord Denning M.R. in dismissing the appeal said as to damages that the award of £35,000 was a large sum as damages; but one had to remember Lord Bernstein's standing in the community, the reputation which he had built up over a long life, and the outrage to his feelings which he might well have felt at what was said at the end of his life and that the damages were well within the province which a jury could give.

In the present case there are factors that make this a serious case. This was a very grave slander which struck at the heart of the plaintiff's political reputation. The standing of the plaintiff is such as to mean that the injury done to him was grave. It was spoken by the principal opposition speaker and a prominent person whose words would carry more weight than that of a lesser individual and his hearers would be inclined to believe that there must be something in the accusation he was making. The words would eventually be spread by word of mouth. Slander is insidious, the poison would spread over a period of time. The fact that the Government won the election and the fact that the plaintiff was not unseated by the defendant's words does not lessen their gravity. The defendant has never retracted or apologised for a word he had said. The defendant had in correspondence offered a qualified apology which understandably the plaintiff would not accept. He has sought to aggravate the injury at every turn. He has, in an attempt to avoid responsibility, pretended that the words do not bear the meaning put on them by the plaintiff when in truth he must know that his words bore this meaning and he intended them to do so. In my view the plea of fair comment is not an honest one. He has administered interrogatories of a kind designed to convey a smear. He approved of the name of the "Save Democracy Trust Fund". He has suggested that this case is all about the ability to contest the next election and has tried to distort the plaintiff's motives in bringing this action and so further to bring the plaintiff into disrespect. The defendant accepts that in no sense is the plaintiff seeking to attack democracy. That being so I think he should have attempted to persuade the trustees of the fund to change the name of the Fund and should if the Trustees had declined to do so have issued a public disclaimer of the title.

The plaintiff alleges in his pleading that the article in the *Financial Times* of November 1, 1977, has aggravated damages. The newspaper cutting in itself is no evidence as to its contents and the plaintiff has not called Mr. Smith of the *Financial Times*. The defendant has denied that he told Mr. Smith that this action was brought to silence an opposition leader and that the plaintiff's resort to actions for defamation cows potential opposition candidates at General Elections. The contents of the *Financial Times* article having not been proved damages have not been aggravated.

Arising out of the 1976 General Election the plaintiff had brought four other defamation actions for similar slanders. In none of these cases was the defendant legally represented and judgment in default was entered in each case and damages were assessed at $65,000 in three of these cases and $100,000 in the fourth. The awards in those cases provide some guide in this case.

In all the circumstances I award the sum of $130,000 damages which in my view is a fair compensation for this very serious slander.

In the result there will be judgment for the plaintiff with costs. There will also be an order for an injunction against repetition of the slander as prayed for.

Order accordingly.

Solicitors: *Drew & Napier; Hilborne & Co.*